

Message Text

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NESCO, FODAG, MONTREAL FOR ICAO, VIENNA FOR UNIDO

E.O. 11652: N/A

TAGS: AORG, WHO

SUBJECT: WHO GENEVA GROUP MAY 2

REFS: GENEVA 2977 (NOTAL), STATE 092948 (NOTAL)

1. DEPARTMENT IS DEEPLY CONCERNED TO LEARN THAT THE FORTH-
COMING WHA IS TO BE INFORMED THAT WHO EXECUTIVE BOARD HAS
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INSTITUTED A NEW STAFF RULE AUTHORIZING AN END-OF-SERVICE
GRANT FOR EMPLOYEES HAVING OVER SIX YEARS SERVICE WHOSE
FIXED TERM APPOINTMENTS ARE NOT RENEWED. WHEN THE ICSC
RECOMMENDATION FOR THIS TYPE GRANT WAS DEBATED IN FIFTH
COMMITTEE A NUMBER OF DELEGATIONS, INCLUDING THE U.S.,
VOICED STRONG RESERVATIONS CAUSING THE PROPOSAL TO BE
REJECTED BY THE 31ST UNGA AND REFERRED BACK TO ICSC FOR RE-

STUDY.

2. DEPARTMENT BELIEVES THAT INDIVIDUALS WHO ACCEPT FIXED TERM APPOINTMENTS ARE AWARE OF THE LIMITED NATURE OF THEIR EMPLOYMENT FROM THE OUTSET AND THE PERIOD OF TIME IT MIGHT TAKE THEM AFTER LEAVING WHO TO FIND ANOTHER POSITION SHOULD BE TAKEN INTO CONSIDERATION WHEN NEGOTIATING THEIR SALARY, IN MUCH THE SAME WAY THAT PROFESSIONALS IN OTHER FIELDS NEGOTIATE CONTRACTS FOR THEIR SERVICES. IN THE CASE OF WHO, STAFF RULE 340 REQUIRES THAT CANDIDATES FOR APPOINTMENTS BE

PROVIDED WITH AN OFFER OF APPOINTMENT SIGNED BY, OR ON BEHALF OF, THE DIRECTOR GENERAL CLEARLY OUTLINING THE TERMS OF THE APPOINTMENT, INCLUDING ITS TENURE. THE SAME RULE REQUIRES THAT AN APPOINTEE SIGN AND RETURN TO THE DIRECTOR GENERAL A NOTICE OF ACCEPTANCE STATING THAT HE AGREES TO THE CONDITIONS CONTAINED IN THE OFFER AND ACCEPTS THE STAFF REGULATIONS AND RULES AS A PART OF HIS CONTRACT. THE OFFER OF APPOINTMENT, INCLUDING THE STAFF REGULATIONS AND RULES, AND THE NOTICE OF ACCEPTANCE THEREAFTER CONSTITUTES THE CONTRACT OF EMPLOYMENT. WITH MINOR VARIANCES, THE FOREGOING APPLIES TO THE UN AND OTHER SPECIALIZED AGENCIES.

3. SINCE BOTH PARTIES TO THE EMPLOYMENT CONTRACT AGREE TO ITS TERMS, IN THE ABSENCE OF A QUID PRO QUO, THERE IS NO JUSTIFICATION FOR AMENDMENT IF ALL ITS TERMS ARE FILLED BY BOTH PARTIES.

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4. WHILE WE RECOGNIZE THAT IMPLEMENTATION OF WHA 29.48 WILL REQUIRE THAT WHO NOT RENEW A NUMBER OF FIXED TERM APPOINTMENTS, WE CAN PERCEIVE OF NO VALID REASON FOR PAYING TO AFFECTED PERSONNEL AN END-OF-SERVICE GRANT TO WHICH THEY ARE CLEARLY NOT ENTITLED UNDER THE TERMS OF THEIR EMPLOYMENT CONTRACT. FROM OUR PERSPECTIVE WE CAN PERCEIVE OF NO SPECIAL CIRCUMSTANCES WHICH WARRANTS, ON THE PART OF WHO, SUCH A SERIOUS DEPARTURE FROM THE UN COMMON SYSTEM, ESPECIALLY IN VIEW OF THE ACTION TAKEN ON THIS QUESTION BY THE GENERAL ASSEMBLY. THE FACT THAT THE DIRECTOR GENERAL'S ACTION IS TERMED AN "INTERIM MEASURE" PENDING ICSC'S RE-EXAMINATION OF THIS MATTER AND THE GENERAL ASSEMBLY'S ULTIMATE ACTION THEREON APPEARS TO PRESUPPOSE THAT THE REJECTION OF THE PROPOSAL BY THE 31ST GENERAL ASSEMBLY WILL BE REVERSED. SINCE IT IS OUR INTENTION TO JOIN WITH OTHER DELEGATIONS AND AGAIN ACTIVELY OPPOSE FUTURE PROPOSALS ON THIS SUBJECT WE ARE CONCERNED THAT WHO'S UNILATERAL ACTION, UNLESS "NIPPED IN THE BUD", COULD ESTABLISH A PRECEDENT UPON WHICH EXECUTIVE HEADS OF

AGENCIES MIGHT STRENGTHEN ARGUMENT FAVORING ADOPTION OF END-OF-SERVICE GRANTS FOR FIXED TERM APPOINTMENTS THROUGHOUT THE UN COMMON SYSTEM. NEEDLESS TO SAY, IF SUCH A PROPOSAL WERE TO BE ADOPTED THE BUDGETARY IMPLICATIONS WOULD BE SIGNIFICANT.

5. ASIDE FROM THE OBJECTIONS OUTLINED ABOVE, THE DEPARTMENT HAS RESERVATIONS CONCERNING THE METHOD CONTRIVED BY THE DIRECTOR GENERAL TO INSTITUTE THE INTERIM END-OF-SERVICE GRANT AND QUESTIONS WHETHER IT SHOULD BE CONDONED AND/OR ACCEPTED BY THE ASSEMBLY.

6. FOR EXAMPLE, THE DEPARTMENT BELIEVES THAT ACTION BY THE ASSEMBLY IS NECESSARY TO PROVIDE FOR END-OF-SERVICE GRANTS. WE DO NOT BELIEVE THAT NOTIFICATION TO THE ASSEMBLY OF THE ADOPTION BY THE EXECUTIVE BOARD OF THIS PROVISION IS SUFFICIENT.

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7. IN ITS PRESENT FORM, THE PROVISION OF END-OF-SERVICE GRANTS WOULD BE ACCOMPLISHED BY AMENDMENT OF THE WHO STAFF RULES. STAFF RULE 030 CLEARLY PROVIDES THAT SUCH AMENDMENTS REQUIRE EXECUTIVE BOARD APPROVAL. THEREFORE, ON ITS FACE, PROPER PROCEDURE APPEARS TO HAVE BEEN FOLLOWED FOR ADOPTION OF END-OF-SERVICE GRANTS.

8. HOWEVER, DEPARTMENT BELIEVES THAT THE SUBJECT MATTER OF THE PROPOSED RULE (END-OF-SERVICE GRANTS) IS NOT ONE WHICH MAY PROPERLY BE DEALT WITH IN THE RULES, BUT MUST BE DEALT WITH IN THE STAFF REGULATIONS. THE PURPOSE OF THE STAFF RULES, ACCORDING TO RULE 010, IS TO "IMPLEMENT THE PROVISIONS OF THE STAFF REGULATIONS." SEPARATION FROM SERVICE IS DEALT WITH IN ARTICLE IX OF THE REGULATIONS, WHICH SPECIFICALLY AUTHORIZES INDEMNITY PAYMENTS TO STAFF MEMBERS WHOSE APPOINTMENTS ARE TERMINATED BY THE DIRECTOR-GENERAL. NO PROVISION IS MADE THEREIN FOR PAYMENTS TO STAFF MEMBERS WHOSE APPOINTMENTS EXPIRE IN DUE COURSE. A GRANT OF NEW AUTHORITY TO MAKE SUCH END-OF-SERVICE GRANTS IS MORE PROPERLY DONE BY A NEW REGULATION RATHER THAN IN A STAFF RULE IMPLEMENTING OLD (AND ARGUABLY IRRELEVANT) REGULATIONS.

9. THIS SEEMS ESPECIALLY TRUE WHERE THE POLICY DECISION TO MAKE SUCH PAYMENTS HAS BEEN HOTLY CONTESTED IN OTHER FORA, I.E., THE ICSC AND THE FIFTH COMMITTEE. WE NOTE THAT WHEN THE ICSC PROPOSED END-OF-SERVICE GRANTS, THE PROPOSAL WAS FOR AMENDMENT OF THE UN STAFF REGULATIONS. THE FIFTH COMMITTEE OF THE UNGA WAS ALSO APPARENTLY OF THE OPINION THAT AN AMENDMENT TO THE REGULATIONS WOULD

BE REQUIRED.

10. WHO STAFF REGULATION 12.1 SPECIFIES THAT AMENDMENTS OF THE REGULATIONS REQUIRE ASSEMBLY APPROVAL. ONLY EXCEPTION IS REGULATION 3.2, WHICH PERMITS THE EXECUTIVE LIMITED OFFICIAL USE

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BOARD TO APPROVE "DEVIATIONS FROM THE UN SCALE OF SALARIES AND ALLOWANCES." DEPARTMENT BELIEVES THAT PROVISION OF END-OF-SERVICE GRANTS DOES NOT FALL WITHIN THIS REGULATION, WHICH WAS DESIGNED TO ALLOW EXECUTIVE BOARD TO MAKE COMPARATIVELY MINOR DEVIATIONS FROM UN SCALE, NOT MAJOR SHIFTS IN POLICY.

11. INSTEAD, SUBJECT MATTER OF PROPOSED CHANGE WOULD COME UNDER ARTICLE IX OF REGULATIONS, WHICH DEALS WITH SEPARATION FROM SERVICE AND WHICH IS SUBJECT TO REGULATIONS 12.1 AMENDMENT PROCESS. ARTICLE IX, REGULATION 9.2 ALREADY PROVIDES FOR TERMINATION OF FIXED TERM PAYMENTS AND REGULATION 9.3 GOVERNS TERMINATION INDEMNITY PAYMENTS. WHEN THE ICSC PROPOSED TO UNGA THAT PROVISION BE MADE FOR END-OF-SERVICE GRANTS TO UN EMPLOYEES, AN AMENDMENT TO ARTICLE IX OF THE STAFF RULES WAS PROPOSED.

12. IN SUM, PROVISION OF END-OF-SERVICE GRANTS IS SIGNIFICANT POLICY DECISION AND ASSEMBLY APPROVAL OF IT SHOULD BE OBTAINED.

13. DEPARTMENT REALIZES THIS SOMEWHAT SOPHISTICATED LEGAL ARGUMENT MAY NOT BE EASILY CONVEYED IN ASSEMBLY DEBATE, ESPECIALLY SINCE ON ITS FACE IT APPEARS EXECUTIVE BOARD APPROVAL IS SUFFICIENT TO ADOPT THE NEW RULE. THEREFORE, IN DISCUSSING THIS MATTER WITH GENEVA GROUP, SOME OF WHOSE MEMBERS MAY HAVE BEEN REPRESENTED ON THE EXECUTIVE BOARD WHEN THIS ISSUE WAS RAISED, YOU SHOULD INDICATE THAT U.S. HAS SERIOUS DOUBTS ABOUT THE PROCEDURE USED TO ADOPT THIS CHANGE. MISSION MAY ALSO, AT ITS DISCRETION REQUEST OPINION OF WHO LEGAL COUNSEL AS TO WHETHER AN AMENDMENT TO ARTICLE IX IS NOT REQUIRED.

14. IT SHOULD ALSO BE DETERMINED IF AFFECTED EMPLOYEES 55 YEARS OF AGE AND OVER WHO ELECT TO RECEIVE IMMEDIATE PENSION UNDER THE UN JOINT STAFF PENSION FUND REGULATIONS LIMITED OFFICIAL USE

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WOULD ALSO BE PAID THE INTERIM END-OF-SERVICE GRANT, KEEP-

ING IN MIND THAT THE UN DOES NOT PAY TERMINATION INDEMNITIES TO EMPLOYEES WHO ARE RETIRED UNDER THE UN JOINT STAFF PENSION FUND REGULATIONS.

15. THE DEPARTMENT IS HOPEFUL THAT THE MISSION WILL BE ABLE TO MUSTER SUFFICIENT SUPPORT FROM MEMBERS OF THE GENEVA GROUP AND OTHER MEMBER NATIONS PARTICIPATING IN THE WHA TO OBLIGE THE WHO TO RESCIND THE MEASURES IT HAS TAKEN WITH REGARD TO END-OF-SERVICE GRANTS PENDING REVIEW AND FURTHER ACTION BY THE UNGA ON THE SUBJECT.
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